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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,720	06/12/2006	Kenneth Parry	36290-0394-00-US(222243)	6558
23973 7590 07/09/2010 DRINKER BIDDLE & REATH ATTN: INTELLECTUAL PROPERTY GROUP ONE LOGAN SQUARE, SUITE 2000 PHILADELPHIA, PA 19103-6996				
			EXAMINER LATHAM, SAEEDA MONEE	
			ART UNIT 1782	PAPER NUMBER
			NOTIFICATION DATE 07/09/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DBRIPDocket@dbp.com
penelope.mongelluzzo@dbp.com

Office Action Summary

Application No.

10/582,720

Applicant(s)

PARRY ET AL.

Examiner

Saeeda Latham

Art Unit

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-36, 38 and 40-46 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 26-36, 38, 40-46 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____
- Paper No(s)/Mail Date: ____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/4/2010 has been entered.
2. Claims 26-36, 38, 40-46 are currently pending in this application.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 26-30, 33, 35, 36, 38, 43, 44, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulze et al., USPN 3708952 in view of Seaward et al., USPA 20020023410.**
5. Claims 26, 42 and 46 relate to a method of filling a flexible-walled container having an open end. Schulze teaches pouches that are filled with a particulate product through a nozzle wherein a non-oxidizing gas propels through the nozzle to purge the

product and the pouches of oxygen (abstract). The packages are flat, flexible walled pouches that are filled and sealed (column 1, lines 5-7). The filling station charges a particulate product such as various granular or flake-like foods such as instant coffee, into the pouch (column 3, lines 15-20). The gas is purged into the pouch until the tops are sealed to maintain the package in a substantially oxygen free environment to preserve the freshness and flavor of the product (column 3, lines 59-63). During the time of filling, the clamping of the splitter bar causes some carbon dioxide to escape or bleed upwardly as a result of the pouch being overpurged (column 4, lines 63-67). The purged pouches are advanced to a sealing station (Column 5, lines 41-43).

6. Schulze does not teach mechanically squeezing. Seaward teaches an apparatus for evacuating [considered mechanically squeezing] and sealing a bag that contains comminuted or flowable product such as roasted or ground coffee wherein the bag has a hollow probe where the bag is evacuated and then sealed (abstract). Packaging under a vacuum is more useful in some countries to conform closely to the product, protect the product from the effect of oxygen and the environment, and allow the package to take up less space than a package packed at atmospheric pressure [0002]. It would have been obvious to one having ordinary skill in the art at the time of the invention to have vacuum sealed a bag by the evacuation method taught by Seaward that would be utilized by Schulze to reduce the amount of space in the filled pouches, reduce the outside space taken up by the pouch, and closely conforms to the food product.

7. Neither Schulze nor Seaward teaches to reduce agglomeration. It would have been obvious to one having ordinary skill in the art at the time of the invention to have known how to modify conditions during the course of routine experimentation and optimization procedures to arrive at a desired volume of inert gas, the introduction of inert gas would displace the oxygen and the sealing of the pouch would inherently reduce agglomeration since there is no degradation of the foodstuffs by oxidation.

8. Claims 27-30 relate to the deploying of the container and introduction of food. Schulze teaches each initially flat pouch is partially opened by a shot of gas injected into the pouch (column 2, lines 53-54). The pouch is advanced to the filling station contains mostly carbon dioxide rather than air (Column 4, lines 43-44). The filling station charges a particulate product such as various granular or flake-like foods into the pouch (column 3, lines 15-17).

9. Claim 33 relates to the inflation of the container. Schulze teaches during the time of filling, the clamping of the splitter bar causes some carbon dioxide to escape or bleed upwardly as a result of the pouch being overpurged (column 4, lines 63-67).

10. Claims 35 and 36 relate to the inert gas being introduced into the container. Schulze teaches Figures 5-6 display the bag is engaged tightly against the gas introduction means.

11. Claim 38 relate to heat sealing. Schulze teaches the sealing of the pouches are closed by opposed heated sealing bars (column 6, lines 8-10).

12. Claim 43 relates to the inert gas. Schulze teaches the non-oxidizing gases are nitrogen and carbon dioxide (column 4, lines 19-20).

13. Claim 44 relates to the oxygen gas. Schulze teaches the pouches are maintained in a substantially oxygen-free condition (column 6, lines 11-12). The pouches are filled with less than 2% oxygen in the packaged product (column 6, lines 24-25).

14. **Claims 31, 34, 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulze et al., USPN 3708952 in view of Seaward et al., USPA 20020023410 in further view of Laudenberg USPN 6199601.**

15. Claims 31 and 34 relate to the introduction of liquid foodstuff. Schulze teaches pouches that are filled with a particulate product through a nozzle wherein a non-oxidizing gas propels through the nozzle to purge the product and the pouches of oxygen (abstract). The packages are flat, flexible walled pouches that are filled and sealed (column 1, lines 5-7). The filling station charges a particulate product such as various granular or flake-like foods such as instant coffee, into the pouch (column 3, lines 15-20). The gas is purged into the pouch until the tops are sealed to maintain the package in a substantially oxygen free environment to preserve the freshness and flavor of the product (column 3, lines 59-63). Schulze is modified to have vacuum sealed a bag by the evacuation method taught by Seaward that would be utilized by Schulze to reduce the amount of space in the filled pouches, reduce the outside space taken up by the pouch, and closely conforms to the product.

16. Neither Schulze nor Seaward teaches the introduction of liquid foodstuff. Laudenberg teaches filling flexible pouches with beverages, shredded cheese, and chips wherein jets of gas such as nitrogen and carbon dioxide are delivered and the

pouches are filled with liquid and then a purging station lowers nozzles that purge oxygen from the pouches (abstract). Since Schulze and Landenberg teaches filling food and removal of oxygen from pouches, it would have been obvious to one having ordinary skill in the art at the time of the invention to have purged oxygen from foods such as liquids that are packaged in flexible pouches as taught by Landenberg and selected liquids that are processed by Schulze to purge the liquid food product of oxygen and reduce oxidation.

17. Claim 42 relates to a plastics pouch. Landenberg teaches flexible pouches formed of plastic are used for packaging fluids, used for liquids, granular material, powders (column 1, lines 11-13).

18. **Claim 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulze et al., USPN 3708952 in view of Seaward et al., USPA 20020023410 in further view of Landenberg USPN 6199601 in further view of Fang et al., USPN 4736572.**

19. Claim 32 relates to introducing solid foodstuff followed by a liquid foodstuff. Schulze teaches pouches that are filled with a particulate product through a nozzle wherein a non-oxidizing gas propels through the nozzle to purge the product and the pouches of oxygen (abstract). The packages are flat, flexible walled pouches that are filled and sealed (column 1, lines 5-7). The filling station charges a particulate product such as various granular or flake-like foods such as instant coffee, into the pouch (column 3, lines 15-20). The gas is purged into the pouch until the tops are sealed to maintain the package in a substantially oxygen free environment to preserve the

freshness and flavor of the product (column 3, lines 59-63). Schulze is modified to have vacuum sealed a bag by the evacuation method taught by Seaward that would be utilized by Schulze to reduce the amount of space in the filled pouches, reduce the outside space taken up by the pouch, and closely conforms to the product. Schulze and Seaward are further modified to have purged oxygen from foods such as liquids that are packaged in flexible pouches as taught by Laudenberg and selected liquids that are processed by Schulze to purge the liquid food product of oxygen and reduce oxidation.

20. Schulze, Seaward, nor Laudenberg teaches introducing solid foodstuff followed by a liquid foodstuff. Fang teaches automated bag filler wherein vegetable bits may be filled in the first station and a fluid filled at the second station. Air is removed from the interior of the bag and sealed (column 3, lines 20-27). Since Schulze, Landenberg and Fang teaches filling food and removal of air from packages, it would have been obvious to one having ordinary skill in the art at the time of the invention to have filled foods in a bag in a sequential manner such as vegetable bits then a fluid as Fang and selected solid then liquids foods that are processed by Schulze to purge the food product of oxygen and reduce oxidation. It would have been further obvious to one having ordinary skill in the art at the time of the invention to have ceased the purging of oxygen after the solid foodstuff since Laudenberg teaches purging after the filling of liquid food, and Schulze teaches purging during the filling of solid food.

21. **Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulze et al., USPN 3708952 in view of Seaward et al., USPA 20020023410 in further view of Shima et al., USPN 4981007.**

22. Claims 40 and 41 relates to the foodstuff is cereal based. Schulze teaches pouches that are filled with a particulate product through a nozzle wherein a non-oxidizing gas propels through the nozzle to purge the product and the pouches of oxygen (abstract). The packages are flat, flexible walled pouches that are filled and sealed (column 1, lines 5-7). The filling station charges a particulate product such as various granular or flake-like foods such as instant coffee, into the pouch (column 3, lines 15-20). The gas is purged into the pouch until the tops are sealed to maintain the package in a substantially oxygen free environment to preserve the freshness and flavor of the product (column 3, lines 59-63). Schulze is modified to have vacuum sealed a bag by the evacuation method taught by Seaward that would be utilized by Schulze to reduce the amount of space in the filled pouches, reduce the outside space taken up by the pouch, and closely conforms to the product.

23. Neither Schulze nor Seaward teaches the foodstuff is cereal based. Shima teaches a method of preventing deterioration of freshness and quality of agricultural products such as grains, which involve filling the product into packages with an inert gas (column 2, lines 35, 36, 48, 49). The agricultural products filled include rice, wheat, barley, oats, rye, corn (column 3, lines 65-68). The use of inert gases such as nitrogen and oxygen with the agricultural products prevent flavor loss through oxidation and generation of bacteria, mold, and insects (column 4, lines 5-9). Since Schulze and Shima teaches filling food and inert gas in packages, it would have been obvious to one having ordinary skill in the art at the time of the invention to have filled agricultural products such as rice, wheat, barley, oats, rye, corn into packages with inert gas as

taught by Shima and selected these agricultural products that are processed by Schulze to prevent deterioration and retain the fresh quality of packaged food products.

24. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schulze et al., USPN 3708952 in view of Seaward et al., USPA 20020023410.

25. Claim 45 relates to the oxygen gas. Schulze teaches pouches that are filled with a particulate product through a nozzle wherein a non-oxidizing gas propels through the nozzle to purge the product and the pouches of oxygen (abstract). The packages are flat, flexible walled pouches that are filled and sealed (column 1, lines 5-7). The filling station charges a particulate product such as various granular or flake-like foods such as instant coffee, into the pouch (column 3, lines 15-20). The gas is purged into the pouch until the tops are sealed to maintain the package in a substantially oxygen free environment to preserve the freshness and flavor of the product (column 3, lines 59-63). Schulze further teaches the pouches are maintained in a substantially oxygen-free condition (column 6, lines 11-12). The pouches are filled with less than 2% oxygen in the packaged product (column 6, lines 24-25). Schulze is modified to have vacuum sealed a bag by the evacuation method taught by Seaward that would be utilized by Schulze to reduce the amount of space in the filled pouches, reduce the outside space taken up by the pouch, and closely conforms to the product.

26. Schulze nor Seaward teaches less than 1% of the volume of gas. Since Schulze teaches the pouches are filled with less than 2% oxygen in the packaged product, it would have been obvious to one having ordinary skill in the art, at the time of the

invention, to have selected less than 1% oxygen in the container because of the overlapping range.

Response to Arguments

27. Applicant's arguments filed 5/4/2010 with respect to claims 26--36, 38, 40-46 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saeeda Latham whose telephone number is 571-270-1154. The examiner can normally be reached on Monday to Thursday 8:00AM - 5:00PM EST.

29. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

30. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. L./

Examiner, Art Unit 1782

/Rena L. Dye/

Supervisory Patent Examiner, Art Unit 1782